LEE CHEW MEE

v.

NG KOK KWANG & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHD ZAWAWI SALLEH J
[APPLICATION FOR JUDICIAL REVIEW NO: R2-25-86-2007]
31 MAY 2010

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Locus standi - Application for certiorari to quash decision of Malaysian Medical Council (MMC) - MMC dismissing complaint made in relation to death of patient - Whether executrix or administrator of estate of deceased patient has locus standi to seek judicial review of MMC's decision*

ADMINISTRATIVE LAW: *Exercise of judicial functions - Judicial review - Certiorari - Failure of Malaysian Medical Council to provide grounds for its decision in dismissing charge against medical practitioner - Whether judicial review ought to be allowed - Medical Act s. 29(2)*

ADMINISTRATIVE LAW: *Exercise of judicial functions - Judicial review - Jurisdiction of High Court - Whether High Court can disturb findings of fact by decision making tribunal - Fact presenting possibility of drawing two inconsistent conclusions - Whether High Court can interfere with conclusion reached by decision making tribunal - Whether procedural impropriety, illegality or irrationality demonstrated*

CIVIL PROCEDURE: *Locus standi - Application for certiorari to quash decision of Malaysian Medical Council (MMC) - MMC dismissing complaint made in relation to death of patient - Whether executrix or administrator of estate of deceased patient has locus standi to seek judicial review of MMC's decision*

PROFESSIONS: *Medical practitioners - Professional misconduct - Domestic tribunal - Locus Standi - Complainant of infamous conduct against medical practitioner - Whether complaint to Malaysian Medical Council may be made by executrix or administrator of estate of deceased patient - Medical Regulations 1974, reg. 27*

PROFESSIONS: *Medical practitioners - Professional misconduct - Domestic tribunal - Procedure - Whether Malaysian Medical Council must provide grounds for its decision in dismissing charge against medical practitioner - Medical Act s. 29(2)*

A On 14 March 2004, the applicant lodged a written complaint, *inter alia*, against the 1st respondent in respect of a Laparoscopically Assisted Vaginal Hysterectomy ("surgery") performed on one Jane Lee Chiu Hoong ("patient"). The applicant was the sister of the patient. The patient had passed away four days later. Pursuant to
B the letter of complaint, a preliminary inquiry was held and subsequently a disciplinary inquiry was conducted by the 2nd respondent. After hearing the 1st respondent and his counsel, the 2nd respondent held that there was no case made out against the 1st respondent and the charge against the 1st respondent was
C dismissed ("impugned decision"). The applicant sought an order of *certiorari* to quash the 2nd respondent's decision. In the alternative, the applicant sought an order of *mandamus* directed to the 2nd respondent compelling the 2nd respondent to inquire and determine afresh the charge against the 1st respondent pursuant to reg. 31 of
D the Medical Regulations 1974 and s. 149 of the Medical Act 1971. The 1st respondent submitted that the applicant had no *locus standi* to seek the relief sought or to invoke the provisions of O. 53 of the Rules of the High Court 1980 because the applicant was not the patient concerned. The 1st and 2nd respondents also submitted that
E the proceedings before the 2nd respondent were conducted in accordance with the regulations provided under the Medical Act and the principles of natural justice.

Held (dismissing the application for judicial review with costs):

F **(1)** The applicant had the requisite *locus standi* and sufficient interest in this matter based on the following undisputed facts. The applicant was the executrix and administrator of the estate of the deceased since her demise. Pursuant to reg. 27 of the
G Medical Regulations 1974, there is no specification as to who can be the complainant of infamous conduct. If such infamous conduct had caused death, such complaints can be made by the executrix or administrator of the estate of the deceased. (paras 13 & 14)

H **(2)** Where a person who has a complaint against medical practitioners for alleged infamous conduct on their part is unable to lodge a complaint with the Medical Council on account of disability or it is not practicable for him or her to do so for some other sufficient reasons, such as in the instant
I case, some other person can lodge a complaint on his behalf so that investigations and disciplinary proceedings can be taken against the medical practitioners concerned. (para 18)

(3) The 2nd respondent need not provide any grounds for its decision in dismissing a charge against a medical practitioner. The 2nd respondent was only obliged to provide grounds if it found a medical practitioner guilty of any disciplinary matter under s. 29(2) of the Medical Act. In light of the fact that no grounds were given for the 2nd respondent's decision, there was no basis upon which the applicant could contend that the 2nd respondent had acted without or in excess of its jurisdiction. (para 21)

(4) The reviewing court would not interfere with a tribunal's finding of facts unless the finding was completely unsupported by any evidence. The court could not substitute its judgment for that of the 2nd respondent upon a question as to the weight of the evidence on questions of facts. The fact that the records of the proceedings of the 2nd respondent, when considered as a whole, presented the possibility of drawing two inconsistent conclusions from the evidence did not prevent the 2nd respondent from making the decision as it did. Where there was a conflict of evidence, the 2nd respondent's findings of facts were conclusive. (paras 30 & 31)

(5) The 2nd respondent had acted within its jurisdiction. The applicant failed to demonstrate that there was procedural impropriety involved in the decision making process nor could it be said that its finding or conclusion was based on grounds of illegality or irrationality. To demonstrate that a different conclusion should or could have been arrived at was not sufficient to warrant an order of *certiorari* or *mandamus*. (para 32)

Case(s) referred to:

Cosmopolitan Hospital Pvt Ltd Anr V Vasantha P Nair and Cosmopolitan Pvt Ltd v. VP Santha and Ors; decided on 21st April, 1992, [1, 1992] CPJ 302 (NC) ***(refd)***

Dudley Ernest & Lyncoln Wager Felix v. General Council [1960] AC 794 ***(refd)***

Goh Keah Hock v. Mahkamah Perusahaan, Malaysia & Anor [2002] 1 AMR 63 ***(refd)***

Government of Malaysia v. Lim Kit Siang [1988] 2 MLJ 12 ***(refd)***

Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd [1982] 1 AC 617 ***(refd)***

Libman v. General Medical Council [1972] AC 217 ***(refd)***

Ong Bak Hin v. General Medical Council [1956] 1 LNS 78 PC ***(refd)***

R v. Trade and Industry Secretary, ex parte Lonhro [2989] 1 WLR 525 ***(refd)***

A *Sheila Sangar v. Proton Edar Sdn Bhd & Anor [2009] 8 CLJ 200 HC* ***(refd)***
SP Gupta v. Union of India [1981] Supp SCC 87 ***(refd)***
Swedish Motor Assemblies Sdn Bhd v. Hj Md Ison Baba [1998] 3 CLJ 288 CA ***(refd)***
B *Tengku Jaffar Tengku Ahmad v. Karpal Singh [1993] 4 CLJ 183 HC* ***(refd)***

Legislation referred to:
Medical Act 1971, ss. 29(2), 36, 149
Medical Regulations 1974, regs. 27, 28, 29(2), 31(5)
Rules of the High Court 1980, O. 53

C *For the applicant - James Khong; M/s James Khong*
For the 1st respondent - Darryl SC Goon; M/s Darryl & Loh
For the 2nd respondent - Abigail Lai; M/s Sharizat Rashid & Lee

Reported by Amutha Suppayah

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JUDGMENT

Mohd Zawawi Salleh J:

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Introduction

[1] The applicant seeks an order of *certiorari* to quash the whole decision dated 12 March 2007 handed down by the 2nd respondent in the Malaysian Medical Council Proceedings against the 1st
F respondent, Dr Ng Kok Kwang, wherein the respondent held that no case had been made out in respect of the charges framed by the 2nd respondent against the 1st respondent ("impugned decision").

[2] In the alternative, the applicant seeks an order of *mandamus*
G directed to the 2nd respondent compelling the 2nd respondent to inquire and determine a fresh the charges in Malaysian Medical Council Proceedings against the 1st respondent pursuant to reg. 31 of the Medical Regulations 1974 and s. 149 of the Medical Act 1971 before a newly constituted panel of the 2nd respondent.

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Brief Facts Of The Case

[3] The brief facts of the case are as follows:

(a) On 14 March 2004, the applicant and one Mak Lim Kum
I lodged a written complaint against the 1st respondent and one Dr Susanna Huam Siew Hoon ("Dr Huam") in respect of a

Laparoscopically Assisted Vaginal Hysterectomy ("Surgery") performed on a patient, one Jane Lee Chiu Hoong ("Patient"). The applicant is the sister of the patient. The patient passed away some four days later on 26 November 2002.

(b) The surgery was performed by the 1st respondent. It was Dr Huam who had referred patient to the 1st respondent for the purposes of performing the surgery. The patient was referred to the 1st respondent in view of his experience in laparoscopically assisted vaginal hysterectomies. The 1st respondent's role was only to perform the surgery while Dr Huam was at all material times responsible for the primary case and post-operative care of the patient.

(c) Pursuant to the letter of complaint, a preliminary inquiry was held by the PIC on the following dates; 2 August 2004, 4 October 2004, 19 January 2005, 18 May 2005 and 3 August 2005. Based on the complaint, the PIC proffered four charges against the 1st respondent requiring him to answer the same. (exh. "LCM4" applicant's affidavit at pp. 735 to 740).

(d) On 14 August 2006, the 1st respondent appeared before the PIC to answer the said charges. The 1st respondent gave evidence orally and by way of a statutory declaration affirmed by him on 14 August 2006.

(e) The 1st respondent was subsequently informed by the PIC that it is recommending to the 2nd respondent that there shall be a disciplinary inquiry to be conducted by the 2nd respondent.

(f) On 12 March 2007, the 1st respondent appeared before the 2nd respondent. The four charges proffered by the PIC were reduced to 1. The 1st respondent accordingly answered the charge orally and by way of a statutory declaration dated 12 March 2007. After hearing the 1st respondent and his counsel, the 2nd respondent held that there was no case made out against the 1st respondent and the charge against the 1st respondent was dismissed. The charge is as follows:

> That you had disregarded and neglected your professional duties to the Patient, abused your professional privileges and skills and conducted yourself in a manner derogatory to the reputation of the medical profession by having failed to provide and/or neglected to provide a sufficient and/or

A appropriate standard of medical care in the management of the Patient and violated section 1.1 of the Code of Professional conducts in that:

Head 1

B You had performed the LAVH surgery on the Patient without obtaining the Patient's consent for you to perform the said surgery on her;

Head 2

C You had failed to provide correct, proper and timely information and advice on the post-operative condition and health of your Patient and/or the Patient's next of kin and had failed and/or neglected to provide a sufficient and/or appropriate standard of medical care in the post-operative management of the Patient;

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And in relation to the facts alleged, you are hereby charged with infamous conduct in a professional respect under Section 29(2)(b) of the Medical Act 1971 and if found guilty, punishable under Section 30 of the said Act.

E (g) Through out the proceedings before the PIC, the 1st respondent and the applicant were represented by counsel.

[4] This application was heard together with R2-25-87-2007 because the issue is similar and the complainant in both F applications are the same although two different parties involved.

Applicant's Submission

[5] The applicant in his submission raised a few grounds for judicial review, namely:

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(i) the 2nd respondent failed to consider sufficiently or at all that the 1st respondent had performed the LAVH surgery on the deceased without obtaining the deceased's consent for the 1st respondent to perform the 2nd surgery on the deceased;

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(ii) The 2nd respondent failed to consider sufficiently or at all that the 1st respondent had failed to provide correct, proper and timely information and advice on the post-operative condition and health of the deceased to the deceased and/or the I deceased's next of kin and had failed and/or neglected to provide a sufficient and/or appropriate standard of medical care in the post-operative management of the deceased;

(iii) The 2nd respondent failed to provide any reasons to justify its decision in that there was no case made out to the charges it had framed;

(iv) The 2nd respondent failed to consider sufficiently or at all the inconsistencies between the evidence of the 1st respondent and the evidence of Dr Huam Siew Hoon as to the arrival of the 1st respondent to DSH from Penang; and

(v) The 2nd respondent failed to take into account matters which it ought to have taken into account as the heads of charges have all been sufficiently power.

Submissions Of The Respondents

[6] The 1st respondent submits that the applicant has no *locus standi* to seeks the relief sought or to invoke the provisions of O. 53 of the Rules of the High Court 1980 because the applicant in this case was not the patient concerned. She is but only the patient's sister.

[7] The 1st and 2nd respondents submit that the proceedings before the 2nd respondent were conducted in accordance with the regulations provided under the Medical Act and the principles of natural justice. There was no illegality, irrationality or procedural impropriety to warrant any judicial review or interference with the decision of the 2nd respondent.

Findings Of The Court

Locus Standi

[8] The 1st respondent contends that the applicant lacks *locus standi* because the applicant is not the deceased and does not possess personal interest in the matter. Her legal rights and interest are not affected by the subject matter of the complaint. Further, the nature and structure of the Medical Act 1974 concern matters of public interest and not private rights.

[9] To support the submissions, the 1st respondent cited of the following cases:

(i) *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12; and

(ii) *Tengku Jaffar Tengku Ahmad v. Karpal Singh* [1993] 4 CLJ 183.

[10] The 1st respondent further submits that by its nature the 2nd respondent's jurisdiction is limited to matters of ethics in the practice of medicine. The 2nd respondent is not concerned with negligence or compensation for any rights infringed by a medical practitioner. Indeed, a separate action (*vide* Kuala Lumpur High Court Civil Suit No. S5-22-1053-2008) has been filed in the High Court against *inter alia* the 1st respondent by the applicant as the administratrix of the patient's estate.

[11] The Medical Act does not create any enforceable private right or cater for any monetary compensation. The Medical Act must be viewed as a public interest legislation and the 2nd respondent's disciplinary jurisdiction thereunder are matters of public interest and not private rights. Thus, the focus of the Medical Act is really on medical practitioners and alleged infamous conduct on their part. A complainant benefits not from these disciplinary proceedings under the Medical Act. Accordingly, as no benefit or interest is created under the Medical Act in favour of complainants, and as the focus is solely on the medical ethics of medical practitioners, it is the submission of the 1st respondent that complainants under the Medical Act, such as the applicant, has no sufficient interest, and thus no *locus standi*, to initiate proceedings for judicial review of disciplinary proceedings or the decision of the 2nd respondent under the Medical Act.

[12] With respect, I disagree. In my considered opinion, in determining this issue, the court ought to consider the issue of interest and *locus standi* of the applicant in its proper context, ie, the disciplinary functions of the 2nd respondent and the position of the applicant as a complainant contemplated in the Act. The question of *locus standi* cannot be considered in the abstract or as an isolated point. In the House of Lords case of *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd* [1982] 1 AC 617 at p. 630 [TAB 3 of SBOA], Lord Wilberforce enunciated as follows when determining the sole issue of *locus standi*:

> I think that it is unfortunate that this course has been taken. There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application; then it would be quite correct as the threshold to refuse him leave to apply. The right to do so is an important safeguard against the courts being

> flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest cannot, in such cases, be considered in the abstract, or as an isolated point: It must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates. This, in the present case, necessarily involves the whole question of the duties of the Inland Revenue and the breaches or failure of those duties of which the respondents complain.

[13] I am of the considered opinion that the applicant has the requisite *locus standi* and sufficient interest in this matter based on the following undisputed facts:

(a) The applicant is the executrix and administrator of the estate of the deceased since her demise.

(b) Infamous conduct which caused the death of the deceased is the subject matter of her complaint to the 2nd respondent.

(c) The complaint of the applicant is the premise of the enquiry of the 2nd respondent against the 1st respondent.

(d) The impugned decision of the 2nd respondent arises out of its enquiry into the complaint of the applicant.

[14] Pursuant to reg. 27 of the Medical Regulations 1974, there is no specification as to who can be the complainant of infamous conduct. Surely, such complainants must include but are not limited to the victims of infamous conduct. By logical extension, if such infamous conduct had caused death, such complaints can be made by the executrix or administrator of the estate of the deceased. Otherwise, infamous conduct involving the medical profession which causes death would never be the subject of complaints to the 2nd respondent. This would certainly defeat the purpose of having such a provision in the first place.

[15] In the Indian case of *Cosmopolitan Hospital Pvt Ltd Anr V Vasantha P Nair and Cosmopolitan Pvt Ltd v. VP Santha and Or*s.; decided on 21 April 1992, [1, 1992] CPJ 302 (NC), the National Commission has decided some important points regarding

A maintainability of complaints regarding medical services under the Consumer Protection Act, 1986 and held, *inter alia*, that in the case of death of a patient, legal heirs of the deceased have *locus standi* to file complaint under the Act and they are held to be "consumers".

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[16] It is noteworthy at this juncture that the 2nd respondent has not taken the position that the applicant lacks *locus standi*. It is the 1st respondent that mounts this challenge. In fact, the committee and/or the 2nd respondent had:

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(a) In accordance with reg. 28 of the Medical Regulations 1974, exercised its discretion to not summarily dismiss the complaint. This plainly shows the existence of sufficient interest of the applicant;

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(b) In accordance with reg. 29 of the Regulations, informed the applicant and the 1st respondent of the convening of the inquiry into the complaint;

(c) Examined the applicant and subjected her to cross-examination
E by counsel for the 1st respondent. Her statements were recorded as evidence;

(d) Subsequent thereto, the committee in finding that the statements supported the complaint recommended an enquiry by the 2nd respondent; and

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(e) The 2nd respondent then framed the charges against the 1st respondent and the enquiry took place.

[17] The *locus standi* and interest of the applicant is further
G fortified as follows:

(a) Regulation 27 specifically provides that the 2nd respondent is to receive complaints of infamous conduct of medical practitioners.

(b) It is thus a legal avenue of complaint for persons who have
H suffered such infamous conduct or who have information on the same.

(c) This legal avenue for complaints provided by the 2nd respondent is approved by the Minister of Health pursuant to
I the exercise of the 2nd respondent's powers conferred under s. 36 of the Medical Act 1971.

(d) Without such an avenue, it is conceivable that innumerable instances of infamous conduct would not reach the 2nd respondent's knowledge and thus defeat one of the four limbs in the Act wherein medical practitioners may be disciplined for public policy purposes.

(e) Hence, the complainant is the very class of person that the Act has in contemplation with regard to the regulation of medical practitioners. This was what Parliament had legislated. In this connection, a complainant has sufficient interest to see that his complaint is properly dealt with and if not, he has the *locus standi* to challenge the result and/or the way it has been disposed. This applies to the applicant herein who availed the estate of the deceased of reg. 27 in lodging the complaint.

[18] In my considered opinion we have to adopt a realistic approach on this matter. Where a person who has a complaint against medical practitioners for alleged infamous conduct on their part is unable to lodge a complaint with the Medical Council on account of disability or it is not practicable for him or her to do so for some other sufficient reasons, such as in the instant case, some other person can lodge a complaint on his behalf so that investigations and disciplinary proceedings can be taken against the medical practitioners concerned.

[19] Even courts have liberated themselves from traditional thought to make access to justice a reality. Courts realised that it was necessary to depart from traditional rule of *locus standi* and to broaden access to justice by providing that where a legal wrong or a legal injury is caused to a person, who by reason of their disability, cannot approach the court for relief, any member of the family who has interest in matter, acting *bona fide*, can maintain an application in the High Court, seeking judicial redress for the legal wrong or injury caused to such person. This was in a way an extention of the principle under which *habeas corpus* petition is allowed to be filed by his or her family for release of a person held under illegal detention since the person detained, is on account of his detention, not free to have access to justice.

[20] Perhaps, the most powerful statement on this matter was given by a seven - Judge Special Bench in the Indian case of *SP Gupta v. Union of India* [1981] Supp SCC 87. The judgment recognized the *locus standi* of lawyers to file writ petition by way of public interest litigation. The case concerned the transfer of a Chief Justice of a High Court and non-extension of the term of an additional-judge. What was at stake was also the issue of independence of the judiciary. Explaining the liberation of the concept of *locus standi*, it was said (SCC p. 207, para 16):

> [I] It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him.

The Impugned Decision

[21] It is clear that the 2nd respondent need not provide any grounds for its decision in dismissing a charge against a medical practitioner. The 2nd respondent is only obliged to provide grounds if it finds a medical practitioner guilty of any disciplinary matter under s. 29(2) of the Medical Act. Rule 31 of the Medical Regulations 1974 provides as follows:

> (5) If at the close of inquiry, the Council finds that no case has **been made out against the practitioner it shall direct that the charge be dismissed and shall inform the practitioner accordingly**.
>
> (6) If at the close of the inquiry the Council **finds the practitioner guilty** of any disciplinary matter specified in section 29(2) of the Act, **it shall inform the practitioner of its finding and the grounds for its decision** and shall request such practitioner to make any plea in mitigation as he deems fit, (Emphasis added)

[22] It is trite that r. 31(5) of the Medical Regulations 1974 mirrors the approach under the common law. The established principle seems to be that generally under common law there is no obligation imposed on tribunals to give reasons on administrative decisions but where the statute expressly provides for reasons to be given, it is a duty that reasons should be given.

[23] Where in appropriate cases, it is considered desirable or even necessary to know the reasons for a decision, the courts have readily implied a duty in the administrative tribunal or the lower court to give reasons for its decisions. The nature and circumstances of the adjudication may indicate a necessity for giving reasons.

[24] In disciplinary proceedings, the Medical Council has, by tradition given no reasons for their decisions. As stated in *Libman v. General Medical Council* [1972] AC 217 at p. 221A-B, since:

> the Disciplinary Committee does not in general give reasons for its decision ... the only circumstances in which an appellate court can reverse a view of the facts taken by the Disciplinary Committee would be a case where, on examination, it would appear that the committee had misread the evidence to such an extent that they were not entitled to make a finding in the state of the evidence presented before them.

[25] In *R v. Trade and Industry Secretary, ex parte Lonhro,* [2989] 1 WLR 525 at 539H-540B, Lord Keith said:

> The absence of reasons for a decision where there is no duty to give them cannot by itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had had no rational reason for his decision.

[26] In this instant case, in light of the fact that no grounds were given for the 2nd respondent's decision, there is thus no basis upon which the applicant may properly or legitimately contend that the 2nd respondent had "... acted without or in excess of its jurisdiction ..." either as alleged by the applicant or otherwise.

[27] Indeed, it is thus quite impossible for the applicant to prove or demonstrate, as alleged, that the 2nd respondent "failed to consider sufficiently or at all" or had "... failed to take into account ..." as alleged in the applicant.

"Infamous Conduct"

[28] It is important to note that the 2nd respondent deals with the issue of ethics and does not in any way deal with the issue of negligence. The definition of "infamous conduct" has been provided in the cases enumerated below. Firstly, the case of *Dudley Ernest & Lyncoln Wager Felix v. General Council* [1960] AC 794 where the House of Lords held that the word "infamous or disgraceful should be construed in conjunction with the word in a professional respect." In *Ong Bak Hin v. General Medical Council* [1956] 1 LNS 78; [1956] MLJ 116, the court held at p. 119:

> The position of the General Medical Council in relation to its disciplinary powers under the Medical Act of 1958 was considered by the House of Lords in proceedings by way of *certiorari* in *General Medical Council v. Spackman* [1943] AC 627; [1943] 2 All ER 33, Viscount Simon LC, after referring to s. 29 of the Medical Act of 1858, said:
>
> > That section draws a significant distinction between a case in which the impeached practitioner has been convicted of felony or misdemeanor and a case in which the allegation of infamous conduct is not connected with a criminal conviction. In the former case, the decision of the council is properly based on the fact of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted. In the latter case, the decision of the council, if adverse to the practitioner, must be arrived at 'after due inquiry', and this of course means after due inquiry by the council.
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> In *FW Goonetilleke v. The Medical Council* [1911] 1 LNS 12 the Court stated:
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> > It is an informal inquiry as to whether the person charged has in fact done what he is said to have done and, if he has, whether doing it was "infamous conduct" from a professional standpoint. This last is purely for the expert tribunal, there can be no law about it.

[29] It is pertinent to note that the applicant mounted an attack against the findings of facts made by the 2nd respondent based on the available evidence. If this court were to accede to the applicant's submissions, it would mean this court would be investigating the merits or justification of the order of the 2nd respondent on the basis of the facts and evidence found by the 2nd respondent. This was in essence an invitation to this court to exercise appellate powers, not judicial review jurisdiction. In other words, the court will be using the remedy of *certiorari* "to cloak the exercise of appellate power" (see *Swedish Motor Assemblies Sdn Bhd v. Hj Md Ison Baba* [1998] 3 CLJ 288; *Sheila Sangar v. Proton Edar Sdn Bhd & Anor* [2009] 8 CLJ 200).

[30] There is a plethora of weighty authorities to state that the reviewing court will not interfere with a tribunal's finding of facts unless the finding was completely unsupported by any evidence. In *Goh Keah Hock v. Mahkamah Perusahaan, Malaysia & Anor* [2002] 1 AMR 63, Faiza bin Tamby Chik J asserted that:

(a) It is also trite that it is not the reviewing court's function to interfere on the insufficiency of evidence.

(b) the reviewing court would not review, reassess, reappreciate evidence or draw its own inferences as to facts from the evidence.

(c) The conclusion of findings is purely for the Industrial Court in this instance.

(d) The reviewing court will not interfere with such findings merely on the basis that it may arrive at a different conclusion.

[31] This court cannot substitute its judgment for that of the 2nd respondent upon a question as to the weight of the evidence on questions of facts. The fact that the records of the proceedings of the 2nd respondent, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the 2nd respondent from making the decision as it did. Where there is a conflict of evidence, the 2nd respondent's findings of facts are conclusive. Thus, great weight is due to the finding of facts by the 2nd respondent because the 2nd respondent is in an advantage position to assess the credibility of witnesses that

A so significant in the disciplinary proceedings. The applicant has the burden of proving convincingly that the 2nd respondent's decision is unsupported by evidence.

[32] I have scrutinized the 2nd respondent's statutory declaration
B dated 12 March 2007 (see: exh. "NKK3 1st respondent's affidavit). I am satisfied that the 2nd respondent had acted in accordance with the relevant principles prescribed by law and hence the 2nd respondent acted within its jurisdiction. The applicant failed to demonstrate that there was procedural impropriety involved in the
C decision making process nor could it be said that its finding or conclusion was based on grounds of illegality or irrationality. To demonstrate that a different conclusion should or could have been arrived at is not sufficient to warrant an order of *certiorari* or *mandamus*.

D **[33]** Wherefore, for the reasons above stated, the application for judicial review is dismissed with costs.

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